years 2000, 2001, and 2002; to the Committee on Finance.

By Mr. MURKOWSKI (for himself, Mr. BREAUX, Mr. GORTON, Mr. COCHRAN, Mr. HUTCHINSON, Ms. COLLINS, Mrs. LINCOLN, Mr. SHELBY, Ms. SNOWE, Mrs. MURRAY, Mr. SESSIONS, Mr. SMITH of Oregon, Mrs. HUTCHISON, Mr. GRAMS, and Ms. LANDRIEU):

S. 1303. A bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WARNER:

S. 1298. A bill to provide for professional liability insurance coverage for Federal employees, and for other purposes; to the Committee on Governmental Affairs.

THE FEDERAL EMPLOYEES EQUITY ACT OF 1999

Mr. WARNER. Mr. President, I rise today to introduce the Federal Employees Equity Act of 1999.

My legislation expands a provision included in the omnibus appropriations bill for fiscal year 1997 (P.L. 104–208) to allow federal agencies to contribute to the costs of professional liability insurance for their senior executives, managers and law enforcement officials. While this important benefit contained in the Omnibus Appropriation bill was indeed enacted, it has not been made available on as wide a basis to federal employees as we had hoped.

The Federal Employees Equity Act would ensure that federal agencies reimburse one-half the premiums for Professional Liability Insurance for employees covered by this bill. Federal managers, supervisors, and law enforcement officials should not have to fear the excessive costs of legal representation when unwarranted allegations are made against them for investigations of these allegations are conducted.

I was a strong supporter of the provision in 1996 because federal officials often found themselves to be the target of unfounded allegations of wrongdoing. Sometimes allegations were made by citizens, against whom federal officials were enforcing the law and by employees who had performance or conduct problems. Although many allegations have proven to be specious, these federal officials were often subject to lengthy investigations and had to pay for their own legal representation when their agencies could not provide it.

The affected federal managers, supervisors, and law enforcement officials are generally prohibited from being represented by unions. For employees who are in bargaining units represented by unions, Congress allows federal agencies to subsidize the time and expenses of union representatives when they are needed by such employees, whether or not they are dues paying members of the union.

Because these federal officials are denied union representation, they have found it necessary to purchase professional liability insurance in order to protect themselves when allegations are made against them to the inspector general of their agency, to the Office of Special Counsel, or to the EEO office. The insurance provides coverage for legal representation for the employees when they are accused, and will pay judgements against the employee up to a maximum dollar amount if the employee is found to have made a mistake while carrying out his official duties. Currently, these managers must hire their own lawyers in order to defend their reputation and careers when they are the subject of a grievance, regardless of whether the complaint has merit.

The current law has had some success and has been implemented by several federal departments including: Departments of Agriculture, Education, Interior, Labor, and such agencies as the Social Security Administration, Small Business Administration, General Services Administration, Securities and Exchange Commission, National Aeronautics and Space Administration, the Office of the Inspector General at the Department of Housing and Urban Development, the National Science Foundation, the Merit Systems Protections Board, the Office of the Inspector General at the Office of Public Health and Science, and the Substance Abuse and Mental Health Services Administration at Department of Health and Human Services.

Regrettably, other departments such as Treasury, Justice, Defense, Commerce, Transportation, Veterans Affairs, and agencies such as the Equal Employment Opportunity Commission, and the Office of Personnel Management have not seen fit to do so.

The professional associations of these officials (the Senior Executives Association, the Professional Managers Association, the FBI Agents Association, the Federal Criminal Investigators Association, the Federal Law Enforcement Officers Association, the National Association of Assistance U.S. Attorneys, and the National Treasury Employees Union) have endorsed the concept for legislation to require federal agencies to reimburse half the cost of premiums for professional liability insurance.

The intent of this measure is simply to ''level the playing field'' so that supervisors and managers are treated equally by various federal agencies and have access to protections similar to those which are already provided for rank and file federal employees.

I request your support for these federal officials and for this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1298

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROFESSIONAL LIABILITY INSURANCE.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Employees Equity Act of 1999''.

(b) IN GENERAL.—Section 636(a) of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (Public Law 104–208; 110 Stat. 3009–363; 5 U.S.C. prec. 5941 note) is amended in the first sentence by striking ''may'' and inserting ''shall''.

(c) LAW ENFORCEMENT OFFICERS.—Section 636(c)(2) of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (Public Law 104–208; 110 Stat. 3009-364; 5 U.S.C. prec. 5941 note) is amended to read as follows:

''(2) the term 'law enforcement officer' means an employee, the duties of whose position are primarily the investigation, apprehension, prosecution, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including—

''(A) any law enforcement officer under section 8331(20) or 8401(17) of title 5, United States Code;

''(B) any special agent under section 206 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4823);

''(C) any customs officer as defined under section 5(e)(1) of the Act of February 13, 1911 (19 U.S.C. 267);

''(D) any revenue officer or revenue agent of the Internal Revenue Service; or

''(E) any Assistant United States Attorney appointed under section 542 of title 28, United States Code.''.

(d) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the later of—

(1) October 1, 1999; or

(2) the date of enactment of this Act.

By Mr. ROCKEFELLER (for himself, Mr. NICKLES, Mr. ROBB, Mr. HATCH, and Mr. MACK).

S. 1299. A bill to amend the Internal Revenue Code of 1986 to provide corporate alternative minimum tax reform; to the Committee on Finance.

ALTERNATIVE MINIMUM TAX REFORM ACT OF 1999

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the ''Alternative Minimum Tax Reform Act of 1999'' with a bipartisan group of my colleagues on the Senate Finance Committee, Senators NICKLES, ROBB, HATCH and MACK. This bill is designed to improve the way the corporate alternative minimum tax works for capital intensive and commodity based companies. It is relatively modest in scope and I hope it will be part of any discussion we have about how we might deliver appropriate tax relief. Even though this bill does not change the fundamentals of the corporate AMT, it would eliminate some of the unfairness of current law by allowing companies with long term AMT credits to recover those credits faster. I think this bill should be part of the Finance Committee's discussions about constructive ways to provide corporate tax relief.

The alternative minimum tax imposes a significant long term tax burden on capital intensive industries —it is not a minimum tax, but is, in fact, a maximum tax which requires companies to calculate their taxes two different ways and pay the higher of the two calculations. It hits our manufacturing sector hard because these businesses are most likely to have to make large investments in plants and equipment. Manufacturing businesses that make commodity products often have slim profit margins and must contend with fierce international competition. The coal and steel industry are perfect examples of these types of industries. Other businesses with tight profit margins such as start up companies are also negatively affected by AMT.

Today, a taxpayer's AMT may be reduced by foreign tax credits and net operating losses, but they are limited to 90% of the alternative minimum tax. Under present law, if a taxpayer pays alternative minimum tax in any year, the amount of that payment is treated as an alternative minimum credit for future years. This was intended to ensure that companies did not wind up paying more under the AMT than was owed under the regular income tax. However, under current law, AMT credits may be used to reduce regular tax but not alternative minimum tax. No carryback of credits is permitted.

The provisions of the ''Alternative Minimum Tax Reform Act of 1999'' would allow a corporation with AMT credits that are unused after three or more years to reduce its tentative minimum tax by a maximum of 50% using those credits. The portion which would be allowed would the lesser of the aggregate amount of the taxpayer's AMT credits that are at least three years old; or 50% of the taxpayer's alternative minimum tax. The taxpayer would use its oldest AMT credits first under both current law that allows a company to use its AMT credits, and under the provisions of this bill. The bill would enhance a company's ability to use AMT credits to reduce its regular tax. Finally, the bill would allow a taxpayer with AMT net operating losses in the current and two previous years to carry back AMT net operating losses up to 10 years to offset AMT paid in previous years. First-in, and first-out ordering would apply. This provision would help companies in the toughest financial shape.

The ''Alternative Minimum Tax Reform Act of 1999'' is designed to help prevent companies from being trapped permanently into AMT status. Recovering more AMT credits sooner will help ease the position of many companies who are now stuck with excess and unusable AMT credits. Too many companies have paid AMT for years and see no possibility of using their AMT credits without this reform. Moreover, a great many U.S. companies have had to deal with sharply decreasing commodity prices due to the collapse of markets in Asia and around the world over the last few years. Without some assistance it will be very hard for American companies to continue to modernize and remain competitive. Their position of accumulating excess AMT credits hurts their cash flow and their bottomline profitability.

The Alternative Minimum Tax Reform Act of 1999 is something reasonable we can do to help companies that are the backbone of our manufacturing base. I look forward to discussing this issue with my colleagues and to a score of how much this proposal would cost from the Joint Tax Committee to inform our discussions.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1299

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Alternative Minimum Tax Reform Act of 1999.''.

SEC. 2. LONG-TERM UNUSED CREDITS ALLOWED AGAINST MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 53 of the Internal Revenue Code of 1986 (relating to limitation) is amended by adding at the end the following:

''(2) SPECIAL RULE FOR CORPORATIONS WITH LONG-TERM UNUSED CREDITS.—

''(A) IN GENERAL.—If a corporation to which section 56(g) applies has a long-term unused minimum tax credit for a taxable year, the credit allowable under subsection (a) for the taxable year shall not exceed the greater of—

''(i) the limitation determined under paragraph (1) for the taxable year, or

''(ii) the least of the following for the taxable year:

''(I) The sum of the tax imposed by section 55 and the regular tax reduced by the sum of the credits allowed under subparts A, B, D, E, and F of this part.

''(II) The long-term unused minimum tax credit.

''(III) The sum of—

''(aa) the excess (if any) of the amount under paragraph (1)(A) over the amount under paragraph (1)(B), plus

''(bb) 50 percent of the tentative minimum tax (determined under section 55(b)(1)(B)).

''(B) LONG-TERM UNUSED MINIMUM TAX CREDIT.—For purposes of this paragraph—

''(i) IN GENERAL.—The long-term unused minimum tax credit for any taxable year is the portion of the minimum tax credit determined under subsection (b) attributable to the adjusted net minimum tax for taxable years beginning after 1986 and ending before the 3rd taxable year immediately preceding the taxable year for which the determination is being made.

''(ii) FIRST-IN, FIRST-OUT ORDERING RULE.—For purposes of clause (i), credits shall be treated as allowed under subsection (a) on a first-in, first-out basis.''.

(b) CONFORMING AMENDMENTS.—Section 53(c) of such Code is amended—

(1) by striking ''The'' and inserting the following:

''(1) IN GENERAL.—The''; and

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

SEC. 3. 10-YEAR CARRYBACK OF CERTAIN NET OPERATING LOSSES.

Section 56(d) of the Internal Revenue Code of 1986 (relating to definition of alternative tax net operating loss deduction) is amended by adding at the end the following:

''(3) SPECIAL RULE.—In the case of a corporation to which section 56(g) applies which has a net operating loss under this part for 3 or more consecutive taxable years which includes a taxable year beginning after the date of enactment of this paragraph, the loss for each such year shall be a net operating loss carryback for purposes of this part to each of the 10 years preceding the taxable year of such loss.''.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after December 31, 1998.

Mr. NICKLES. Mr. President, today I join my colleague from West Virginia, Senator ROCKEFELLER, to introduce legislation to reform the alternative minimum tax, or AMT.

Congress created the AMT in 1986 to prevent businesses from using tax loopholes, such as the investment tax credit or safe harbor leasing, to pay little or no tax. The use of these tax preferences sometimes resulted in companies reporting healthy ''book'' income to their shareholders but little taxable income to the government.

Therefore, to create a perception of fairness, Congress created the AMT. The AMT requires taxpayers to calculate their taxes once under regular tax rules, and again under AMT rules which deny accelerated depreciation, net operating losses, foreign tax credits, and other deductions and credits. The taxpayer then pays the higher amount, and the difference between their AMT tax and their regular tax is ''credited' to offset future regular tax liability if it eventually falls below their AMT tax liability.

Unfortunately, the AMT has had a negative, unanticipated impact on many U.S. businesses. As it is currently structured, the AMT is a complicated, parallel tax code which places a particularly heavy burden on capital intensive companies. Corporations must now plan for and comply with two tax codes instead of one. Further, the AMT's elimination of important cost-recovery tax incentives increases the cost of investment and makes U.S. businesses uncompetitive with foreign companies.

Mr. President, I am proud to say that several AMT reforms I began pushing in 1995 were eventually enacted in 1997. The Taxpayer Relief Act of 1997 exempted small corporations from the AMT, and conformed the depreciation cost-recovery periods for AMT and the regular corporate tax. The depreciation provisions in particular will relieve much of the AMT's negative impact on capital-intensive businesses.

However, even with these changes, some businesses continue to be chronic

AMT taxpayers, a situation that was not contemplated when the AMT was created. These companies continue to pay AMT year after year, accumulating millions in unused AMT credits. These credits are a tax on future, unearned revenues which may never materialize, and because of the time-value of money their value to the taxpayer decreases every year.

The legislation Senator ROCKEFELLER and I are introducing today helps AMT taxpayers recover their AMT credits in a more reasonable time frame than under current law. Our bill would allow businesses with AMT credits which are three years old or older to offset up to 50 percent of their current-year tentative minimum tax. This provision will help chronic AMT taxpayers dig their way out of the AMT and allow them to recoup at least a portion of these ''accelerated tax payments'' in a reasonable time-frame.

Mr. President, our legislation does not repeal the AMT, and it will not allow taxpayers to ''zero out'' their tax liability. This bill specifically addresses the problems faced by companies that are buried in AMT credits they might otherwise never be able to utilize. I encourage the Senate Finance Committee to consider our bill when drafting this year's tax reconciliation legislation.

By Mr. HARKIN:

S. 1300. A bill to amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to prevent the wearing away of an employee's accrued benefit under a defined plan by the adoption of a plan amendment reducing future accruals under the plan; to the Committee on Finance.

OLDER WORKERS PENSION PROTECTION ACT OF 1999

Mr. HARKIN. Mr. President, older workers across America have been paying into pension plans throughout their working years, anticipating the secure retirement which is their due. And now, as more Americans than ever before in history approach retirement, we are seeing a disturbing trend by employers to cut their pension benefits.

Many companies are changing to so-called ''cash balance'' plans which often saves them millions of dollars in pension costs each year by taking a substantial cut out of employee pensions. This practice allows employers to unfairly profit at the expense of retirees.

Employees generally receive three types of benefits for working: direct wages, health benefits and pensions. Two of those are long-term benefits which usually grow in value as workers become older. Pensions are paid entirely after a worker leaves. Reducing an employee's pension years after it is earned should be no more legal than denying a worker wages after work has been done.

In fact, our laws do prohibit employers from directly reducing an employee's pension accrued benefit. Unfortunately, however, these protections are being sidestepped and workers' pensions are being indirectly reduced through the creation of cash balance pension plans.

Under traditional defined benefit plans, a worker's pension is based on their length of employment and their average pay during their last years of service. Their pension is based on a preset formula using those key factors rather than the amount in their pension account. Under the typical cash balance plan, a worker's pension is based on the sum placed in the employee's account. That sum is based on their wages or salary year to year.

When a worker shifts from a traditional to a cash balance plan, the employer calculates the value of the benefits they have accrued under the old plan. The result for many older workers who have accrued significant sums in their pension that are higher than it would have been under the new cash balance plan. In that case, under many of these cash balance plans the employer simply stops contributing to the value of their pension till the value reaches the level provided for under the new plan. And this can go on for significant periods—five years and sometimes more. Pension experts call this ''wear away'' others call it a ''plateau.''

This is not right. It is not fair. In fact, I believe it is a type of age discrimination. After all, a new employee, usually younger, would effectively be receiving greater pay for the same work: money put into their pension plan. And, there are some who believe this practice violates the spirit and perhaps the letter of existing law in that regard.

What does this mean to real people?

Two Chase Manhattan banking executives hired an actuary to calculate their future pensions after Chase Manhattan's predecessor, Chemical Bank, converted to a cash balance plan. The actuary estimated their future pensions had fallen 45 percent. John Healy, one of the executives, says ''I would have had to work about ten more years before I broke even.''

Ispat Inland, Inc, an East Chicago steel company, converted to a cash balance plan January 1. Paul Schroeder, a 44-year-old engineer who has worked for Ispat for 19 years, calculated it could take him as long as 13 years to acquire additional benefits.

Why are companies changing to these cash balance plans? They have lots of stated reasons: ease of administration, certainty in how much is needed to pay for the pension plan and that the plan is beneficial to those workers who move from company to company (with similar pension plans). But, the big reason is the companies save millions of dollars. They save it because the pensions provided for with almost all cash balance plans are, on average far less generous, and they immediately reduce their need to pay anything into a pension plan at all for a while, sometimes for years, because of this wear away or plateau feature.

At one conference of consulting actuaries, Joseph M. Edmonds told companies:

> . . . it is easy to install a cash balance plan in place of a traditional defined benefit plan and cover up cutbacks in future benefit accruals. For example, you might change from a final average pay formula to a career average pay formula. The employee is very excited about this because he now has an annual account balance instead of an obscure future monthly benefit. The employee does not realize the implications of the loss of future benefits in the final pay plan. Another example of a reduction in future accruals could be in the elimination of early retirement subsidies.

Because traditional pension plans become significantly more valuable in the last years before retirement, the switch to cash balance plans also can reduce older workers' incentive to stay until they reach their normal retirement age.

I support Senator MOYNIHAN's legislation that requires that individuals receive clear individualized notice of what a conversion to a cash balance plan would do to their specific pension. There is no question that shining the light on this dark practice can reduce the chance that it will occur. I certainly agree with his view that those notices should not be generalized where obfuscation is easier and employees will pay less attention to the result.

I also believe that more must be done. For that reason, I am introducing the Older Workers Pension Protection Act of 1999 which prohibits the practice of ''wear away.'' It provides that a company cannot discriminate against longtime workers by not putting aside money into their pension account without any consideration for the long term payments made to the employee's pension for earlier work performed. Under my bill, there would be no wear away, no plateau in which a worker would be receiving no increases in pension benefits while working when other employees received benefits. The new payments would have to at least equal the payments made under the revised pension plan without any regard to how much a worker had accrued in pension benefits under the old plan.

Some suggest that if such a requirement were put in place, companies could and would opt out of providing any pension at all. I do not believe that would happen. Companies with defined benefit plans do not have them because they are required to do so. They do it because of negotiated contracts or because the company has decided that it is an important part of the benefits for employees to acquire and maintain a productive workforce. Many suggest that the simple disclosure alone might prevent a reduction in payment benefits.

Much is made about the gains of younger workers when companies switch to cash benefit plans. There is greater portability. But, none of the experts I've consulted believes that is a dominant motivation of the companies for proposing these changes in pension law. And, the changes I am proposing would not reduce the benefits for younger workers.

I urge my colleagues to take a fresh look at the spirit of the current law that prevents a reduction in accrued pension benefits. I believe it is only fair to extend that law with its current spirit by simply requiring that any company which changes to a cash balance or similar pension plan treats all workers fairly and not penalize older employees whose hard work has earned them benefits under the earlier pension plan.

Mr. President, Ellen Schultz at the Wall Street Journal has done an excellent series of articles on this issue. I ask unanimous consent that a copy of those articles appear in the RECORD at this point. I am also including the text of a piece of this same subject done by NPR. If my colleagues have not seen these articles I commend them to their attention. I believe that once you've read them, you'll agree with me that we must take action to protect the pensions of older workers.

[From the Wall Street Journal, Dec. 4, 1998]

EMPLOYERS WIN BIG WITH A PENSION SHIFT; EMPLOYEES OFTEN LOSE

(By Ellen E. Schultz and Elizabeth MacDonald)

Largely out of sight, an ingenious change in the way big companies structure their pension plans is saving them millions of dollars, with barely a peep of resistance. Unless they happen to have a Jim Bruggeman on their staff.

Sifting through his bills and junk mail one day last year, Mr. Bruggeman found the sort of notice most people look at but don't spend a lot of time on: His company was making some pension-plan changes.

The company, Central & South West Corp., was replacing its traditional plan with a new variety it said was easier to understand and better for today's more-mobile work force. A brochure sent to workers stressed that "the changes being made are good for both you and the company."

Alone among Central & South West's 7,000 employees, Mr. Bruggeman, a 49-year-old engineer in the Dallas utility's Tulsa, Okla., office, set out to discover exactly how the new system, known as a cash-balance plan, worked. During a year-long quest to master the assumptions, formulas and calculations behind it, Mr. Bruggeman found himself at odds with his superiors, and labeled a troublemaker. In the end, though, he figured out something about the new pension system that few other employees have noticed: For many of them, it is far from a good deal.

But it clearly was, as the brochure noted, good for the company. A peek at a CSW regulatory filing in March 1998, after the new plan took effect, shows that the company saved $20 million in pension costs last year alone. Other government filings revealed that whereas the year before, CSW had to set aside $30 million to fund its pension obligations, after it made the mid-1997 switch it didn't have to pay a dime to fund the pension plan.

PENSION LIGHT

The switch to cash-balance pension plans—details later—is the biggest development in the pension world in years, so big that some consultants call it revolutionary. Certainly, many call it lucrative; one says such a pension plan ought to be thought of as a profit center. Not since companies dipped into pension funds in the 1980s to finance leveraged buyouts, have corporate treasurers been so abuzz over a pension technique.

But its little-noticed dark side—one that many companies don't make very clear to employees, to say the least—is that a lot of older workers will find their pensions cut, in some cases deeply.

So far, only the most financially sophisticated employees have figured this out, because the formulas are so complex. Even the Labor Department and the Internal Revenue Service have trouble with them. So thousands of employees, while acutely aware of how the stock market affects their retirement next eggs, are oblivious to the effect of this change. (See related article on page C1.)

One might get the impression, from the rise of 401(k) retirement plans funded jointly by employer and employee, that pensions are a dead species. In fact, nearly all large employers still have pension plans, because pulling the plug would be too costly; the company would have to pay out all accrued benefits at once. Meanwhile, companies face growing obligations as the millions of baby boomers move into their peak pension-earning years.

Now, however, employers have discovered a substitute for terminating the pension plan; a restructuring that often makes it unnecessary ever to feed the plan again.

PITFALLS FOR EMPLOYERS

But this financially appealing move has its risks. The IRS has never given its blessing to some of the maneuvers involved. If employers don't win a lobbying battle currently being waged for exemptions from certain pension rules, some of these plans could be in for a costly fix.

In addition, the way employers are handling the transition could result in employee-relations backlashes as more and more older workers eventually figure out they are paying the price for the transformation of traditional pension plans.

In those traditional plans, most of the benefits build up in an employee's later years. Typical formulas multiply years of service by the average salary in the final years, when pay usually is highest. As a result, as much as half of a person's pension is earned in the last five years on the job.

With the new plans, everyone gets the same steady annual credit toward an eventual pension, adding to his or her pension-account "cash balance." Employers contribute a percentage of an employee's pay, typically 4%. The balance earns an interest credit, usually around 5%. And it is portable when the employee leaves.

For the young, 4% of pay each year is more than what they were accruing under the old plan. But for those nearing retirement, the amount is far less. So an older employee who is switched in to a cash-balance system can find his or her eventual pension reduced by 20% or 50% or, in rare cases, even more.

This is one way companies save money with the switch. The other is a bit more complicated. Companies can also benefit from the way they invest the assets in the cash-balance accounts.

If the employer promised to credit 5% interest to employees' account balances, it can keep whatever it earned above that amount. The company can use these earnings to finance other benefits, to pay for a work-force reduction, or—crucially—to cover future years' contributions. This is why the switch makes pension plans self-funding for many companies.

Although employers can do this with regular pensions, the savings are grater and easier to measure in cash-balance plans. The savings often transform an underfunded pension plan into one that is fully funded. "Cash-balance plans have a positive effect on a company's profitability," says Joseph Davi, a benefits consultant at Towers Perrin in Stamford, Conn. They "could be considered a profit center."

MOTIVE FOR THE MOVE

Employers, however, are almost universally reticent about how they benefit. "Cost savings were not the reason the company switched to a cash-balance plan," says Paul Douty, the compensation director at Mr. Bruggeman's employer, CSW. Sure, the move resulted in substantial cost savings, he says, but the company's goal was to become more competitive and adapt to changing times. Besides, he notes, the $20 million in pension-plan savings last year were partly offset by a $3 million rise in costs in the 401(k); the company let employees contribute more and increased its matching contributions.

There is another reason some employers like cash-balances plans: By redistributing pension assets from older to younger workers, they turn pension rights—which many young employees ignore since their pension is so far in the future—into appealing benefits today. At the same time, older workers lose a financial incentive to stay on the job, since their later years no longer can balloon the pension.

Some pension professionals think companies should be more candid. "If what you want to do is get rid of older workers, don't mask it as an improvement to the pension plan," says Michael Pikelny, an employee-benefits specialist at Hartmarx Corp., an apparel maker in Chicago that decided not to install a cash-balance plan.

UNDER A MICROSCOPE

Most employees aren't equipped to question what employers tell them. But Mr. Bruggeman was. He had a background in finance, his hobby was actuarial science, he had taken graduate-level courses in statistics and probability, and he knew CSW's old pension plan inside and out. So when the company announce it was converting to a cash-balance plan last year, he began asking it for the documents and assumptions he needed to compare the old pension to the new one.

With each new bit of data, he gained another insight. First, he figured out that future pension accruals had been reduced by at least 30% for most employees. CSW got rid of early-retirement and other subsidies and reduced the rates at which employees would accrue pensions in the future.

Employees wouldn't necessarily conclude this from the brochures the human resources department handed out. Like most employers that switch to cash-balances plans, CSW assured employees that the overall level of retirement benefits would remain unchanged. But a close reading of the brochure revealed that this result depended on employees' putting more into their 401(k) plans, gradually making up for the reduction in pensions.

At a question-and-answer session on the new plan before it was adopted, Mr. Bruggeman spoke up and told co-workers how their pensions were being reduced. The next day, he says, his supervisors in Tulsa came to his office and told him that CSW management in Dallas was concerned that his remarks would ''cause a class-action suit'' or ''uprising,'' and said he shouldn't talk to any other employees. He says the supervisor, Peter Kissman, informed him that if he continued to challenge the new pension plan, CSW officials would think he wasn't a team player, and his job could be in jeopardy.

Asked about this, Mr. Kissman says: ''In my department I would not tolerate employee harassment. I believe the company feels the same way. Past that, I really can't speak to this issue. It's being investigated by the company.''

A FEW SWEETENERS

Employers, aware that switching to cash-balance plans can slam older workers, often offer features to soften the blow. They may agree to contribute somewhat more than the standard 4% of pay for older employees, or they may provide a ''grandfather clause.'' CSW offered both options, saying employees 50 or older with 10 years of service could stay in the old plan if they wished. Mr. Bruggeman, a 25-year veteran, was just shy of 49. He calculated that people in his situation would see their pensions fall 50% under the new plan, depending on when they retired.

Mr. Bruggeman told company officials that the plan wasn't fair to some long-term employees. Subsequently, he says, in his November 1997 performance evaluation, his supervisor's only criticism was that he ''spends too much time thinking about the pension plan.'' A CSW official says the company can't discuss personnel matters.

What bothered Mr. Bruggeman even more was his discovery of one of the least-known features of cash-balance plans: Once enrolled in them, some employees don't earn any more toward their pension for several years.

The reasons are convoluted, but in a nutshell: Most employees believe that opening balance in their new pension account equals the credits they've earned so far under the old plan. But in fact, the balance often is lower.

When employers convert to a cash-balance plan, they calculate a present-day, lump-sum value for the benefit each employee has already earned. In Mr. Bruggeman's case, this was $352,000—something he discovered only after obtaining information from the company and making the calculations himself. Yet Mr. Bruggeman's opening account in the cash-balance plan was just $296,000, because the company figured it using different actuarial and other assumptions.

This is generally legal, despite a federal law that bars companies from cutting already-earned pensions. If Mr. Bruggeman quit, he would get the full $352,000, so the law isn't violated. But if he stays, it will take several years of pay credits and interest before his balance gets back up to $352,000.

''WEARAWAY''

Mr. Douty says this happened to fewer than 2% of workers at CSW. But at some companies that switch to cash-balance plans, far more are affected. At AT&T Corp., which adopted a cash-balance plan this year, many older workers will have to work three to eight years before their balance catches up and they start building up their pension pot again. ''Wearaway,'' this is called. Only if an employee knows what figures to ask for can he or she make a precise comparison of old and new benefits.

Indeed, the difficulty of making comparisons has sometimes been portrayed as an advantage of switching to cash-balance plans. A partner at the consulting firm that invented the plans in the 1980s told a client in a 1989 letter: ''One feature which might come in handy is that it is difficult for employees to compare prior pension benefit formulas to the account balance approach.''

Asked to comment, the author of that line, Robert S. Byrne of Kwasha Lipton (now a unit of PricewaterhouseCoopers), says, ''Dwelling on old vs. new benefits is probably not something that's a good way to go forward.''

At one company, employees did know how to make comparisons. When Deloitte & Touche started putting a cash-balance plan in place last year, some older actuaries rebelled. The firm eventually allowed all who had already been on the staff when the cash-balance plan was adopted to stick with the old benefit if they wished.

STRUGGLE AT CHASE

At Chase Manhattan Corp., two executives in the private-banking division hired an actuary and calculated that their future pensions had fallen 45% as a result of a conversion to a cash-balance plan by Chase predecessor Chemical Bank. ''I would have had to work about 10 more years before I broke even and got a payout equal to my old pension,'' says one of the executives, John Healy, now 61.

He and colleague Nathan Davi say that after seven years of their complaints, Chase agreed to give each a pension lump sum of about $487,000, which was roughly $72,000 more than what they would have received under the new cash-balance plan. Although a Chase official initially said the bank had ''never given any settlement to any employee over the bank's pension plans,'' when told about correspondence about the Healy-Davi case, Chase said that a review had determined that about 1,000 employees could be eligible for additional benefits. ''We amended the plan so that it would cover all similarly situated employees,'' a spokesman said.

How many quiet arrangements have been reached is unknown. But employees are currently pressing class-action suits against Georgia-Pacific Corp. and Cummins Engine Co.'s Onan Corp. subsidiary, alleging that cash-balance plans illegally reduce pensions. (Both defendants are fighting the suits.) Judges have recently dismissed similar suits against Bell Atlantic Corp. and BankBoston N.A.

CONCERN AT THE IRS

Not aware of any of this ferment, Mr. Bruggeman in August 1998 filed his multiple-spreadsheet analysis of the CSW cash-balance plan with the IRS and the Labor Department, asking them for a review. Soon after, he says, a manager in CSW's benefits department called him in and ''wanted to know what it would take for me to drop all this.'' The answer wasn't to be ''grandfathered'' and exempted from the new plan. ''I told him all I want is for the company to . . . be fair to employees,'' he says, ''It's the principle of the thing.''

The manager couldn't be reached for comment, but a CSW official says the company takes complaints ''very seriously and they're thoroughly investigated. In every part of this type of investigation an employee is interviewed by a company representative, and in every initial interview the employee is asked for suggestions on what might be a preferred solution.''

Even without Mr. Bruggeman's input, the IRS has a lot of cash-balance data on its plate. The agency is swamped with paperwork from hundreds of new plans seeking its approval, and applications are piling up. The delay is due in part to concern at the IRS that such plans may violate various pension laws, according to a person familiar with the situation. Meanwhile, the consulting firms that create the plans for companies are lobbying for exemptions from certain pension rules.

They say they aren't worried. That's because ''companies who now have these plans are sufficiently powerful, sufficiently big and have enough clout that they could get Congress to bend the law . . . to protect their plans,'' says Judith Mazo, a Washington-based senior vice president for consulting firm Segal Co. Regulators, meanwhile, are playing catch-up. Bottom line, Ms. Mazo says: ''The plans are too big to fail.''

[From ''Morning Edition,'' Feb. 1, 1999]

PROS AND CONS OF CASH BALANCE PLANS FOR RETIREMENT SAVINGS

BOB EDWARDS, host. This is NPR's ''Morning Edition.'' I'm Bob Edwards.

A new type of pension program is becoming popular with the nation's top employers. The program is called the cash balance plan. It's an innovative and complicated type of retirement account suitable for today's modern work force, especially many young mobile employees. And that's the problem. Critics warn cash balance plans benefit the young at the expense of older, longtime workers. NPR's Elaine Korry reports.

ELAINE KORRY reporting. The traditional pension plan so widespread a generation ago essentially promised long-term employees a secure monthly income when they reached retirement age. Eric Lofgren (ph), head of the benefits consulting group (ph) at Watson Wyatt (ph), says that type of pension made sense when people worked at the same job for decades. But, he says, great changes in the workplace have made those plans obsolete.

Mr. ERIC LOFGREN (Benefits Consulting Group, Watson Wyatt). The traditional plan does a very good job for about one person out of 20. But for the rest of us who have changed jobs a couple times in our career, the traditional plan really doesn't deliver, because it rewards long career with one employer and that just isn't the situation for most people.

KORRY. The response of many large employers—so far about 300 of them—has been to quietly switch to a new plan that turns the traditional pension on its head. Lofgren, who helps companies formulate these new cash balance plans, says they spread the wealth around so more employees prosper, perhaps 19 out of 20. But that's not the only reason companies are lining up to make the switch. Edgar Pouk (ph), a New York pension law attorney, says that the real winners in these plan conversions are the employers.

Mr. EDGAR POUK (Pension Law Attorney). They stand to gain by the change, and so they're trying to sell it, and they sell it by emphasizing the advantages of the conversion for younger workers, but not explaining the drawbacks, and serious drawbacks, for older workers.

KORRY. In fact, says Pouk, switching to a cash balance plan can cost older employees tens of thousands of dollars, a loss they may never figure out. This stuff is so technical, many pension experts don't understand it, let alone the average employee. In simple terms, here's what happens: Pension regulations permit companies to use two different interest rates when calculating the value of the old pension vs. the opening balance of the new one. Employers usually choose the formula that favors them, even though it leaves older workers worse off. A pension balance of, say, $100,000 under the old plan might be worth only $70,000 when converted to a cash balance plan. Right there, the older worker is down 30 grand.

It gets worse. For some accounting purposes, the employer can treat the $70,000 as if it were 100 grand. Then the employer can freeze the account until the employee works the five to 10 years it can take to make up the difference. Edgar Pouk says the contributions the company doesn't have to make during that time add up quickly.

Mr. POUK. You're talking about tens of thousands of dollars for each worker. You multiply that by thousands of workers and the employer saves millions of dollars.

KORRY. Often older workers don't know what happened. Some employers, however, are careful to point out the differences. Then older workers have a choice. They can recoup their losses, but only by quitting, in which case they would receive a lump-sum payment equal to their old balance. So cash balance plans may be an inducement for older workers to leave. Olivia Mitchell (ph), head of the Pension Research Council at the Wharton School, says recent changes in labor and law have given older workers many more job protections than before, so employers are resorting to creative ways to ease their older worker force out.

Ms. OLIVIA MITCHELL (Pension Research Council, Wharton School). They may be downsizing, they may be looking for a different type of employee, perhaps with different skills, and so they're taking the cash balance plan as one of many human resource policies to essentially restructure the work force. So it's seen as a tool toward that end.

KORRY. Companies that convert to cash balance plans can level the playing field so that all employees benefit. Some companies will guarantee their older workers a higher rate of return or allow them to keep the old plan until they retire. But those are voluntary measures that eat up the cost savings. For now, regulators have not caught up with the growing momentum toward the new plans. But according to attorney Edgar Pouk, employers who don't protect their older workers are running the risk of landing in court.

Mr. POUK. When you have a number of years where the older worker receives no additional benefits that a plan is illegal per se, because federal law prohibits zero accruals for any year of participation.

KORRY. So far, the Internal Revenue Service has not given its blessing to cash balance plans. Employers have mounted an intense lobbying effort to win a safe harbor within pension law. On the other side, employees at a few large companies have lawsuits pending against the conversions, and some congressional leaders have expressed concern. Staffers on the Senate Finance Committee are considering legislation that would at least require employers to spell out what a pension conversion would mean for older workers. Elaine Korry, NPR News, San Francisco.

By Mr. STEVENS (for himself, Mr. LOTT, Mr. HOLLINGS, and Mr. DORGAN):

S. 1301. A bill to provide reasonable and non-discriminatory access to buildings owned or used by the Federal government for the provision of competitive telecommunications services by telecommunications carriers; to the Committee on Commerce, Science, and Transportation.

COMPETITIVE ACCESS TO FEDERAL BUILDINGS ACT

Mr. STEVENS. Mr. President, today I introduce, along with Senators LOTT, HOLLINGS, and DORGAN, a bill to ensure that the Federal Government stands behind its pledge to foster true competition in the provision of local telecommunications services.

While competition in the local telecommunications sector is growing, new entrants using terrestrial fixed wireless or satellite services lack of the significant advantages of incumbent local exchange carriers when it comes to gaining access to many buildings. This is particularly true when it comes to access to rooftops and to the internal risers and conduits linking the rooftop to the basement, where the access point to the internal phone wiring is usually located.

In some instances these wireless local carriers are welcomed by building owners and landlords with open arms; however, more often than not they meet resistance, are rejected, or just plain ignored. I believe the Federal Government should do more to ensure a level playing field for these new entrants to compete on.

Our bill is designed to spur competition and to hopefully save taxpayer dollars. We focus in this legislation only upon buildings owned by the Federal Government or where the Federal Government is a lessee.

The inspiration of this bill comes from States which have moved to encourage access by competitors. Connecticut and Texas have both enacted measures to promote nondiscriminatory access by telecommunications carriers to rooftops, risers, conduits, utility spaces, and points of entry and demarcation in order to promote the competitive provision of telecommunications and information services.

This bill takes a similar approach to that enacted by the States, and requires that nondiscriminatory access be provided to all telecommunications carriers seeking to provide service to federally-owned buildings and buildings in which Federal agencies are tenants. The National Telecommunications and Information Administration of the Department of Commerce, the NTIA, which is the Agency that coordinates telecommunications policy for Federal agencies, is tasked with implementing this requirement.

Building owners can easily meet the requirements of this bill. They can either certify that they are already bound to provide nondiscriminatory access under State law or they can commit in writing that they will provide such access as a matter of contract.

This bill does not mandate that every building must use the services of these new competitors. What it does say is that the Federal Government should lead by example.

This bill does not mandate a takings. Owners and operators can charge a nondiscriminatory fee for the rooftop and conduit space these technologies use to provide local service—which I am encouraged to say is quite small.

Owners and operators may impose reasonable requirements to protect the safety of the tenants and the condition of the property.

Any damage caused as a result of installing these services will be borne by the telecommunications carrier.

The carriers must pay for the entire cost of installing, operating, maintaining, and removing any facilities they provide.

The bill will not adversely impact the ability of Federal agencies to obtain office space. Federal agency heads may waive the requirements of this bill if enforcement of the bill would result in the agency being unable to obtain suitable space in a geographic area.

The President may also waive the nondiscriminatory access provisions for any building if they are determined to be contrary to the interests of national security.

I look forward to working with NTIA, the General Services Administration, and private building owners who have a leasing relationship with the Federal Government to carry out the purpose of this bill.

My goal is to ensure that the Federal Government sets a good example. I hope it will become the standard in the private sector. Businesses should demand that building owners provide every opportunity for competitive choice in telecommunications providers.

Access to Federal buildings or a building that is housing Federal workers should be encouraged. This bill is a further step in implementing the promise of the Telecommunications Act which Congress enacted.

It will help ensure that telecommunications providers can compete fairly on the basis of the cost and quality of the services provided.

I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 1301

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Competitive Access to Federal Buildings Act''.

SEC. 2. FINDINGS

The Congress finds that—

(1) non-discriminatory access to, and use of, the rooftops, risers, telephone cabinets, conduits, points of entry or demarcation for internal wiring, and all utility spaces in or

on federal buildings and commercial property is essential to the competitive provision of telecommunications services and information services;

(2) incumbent telecommunications carriers often enjoy access to such buildings and property through historic rights of way that were developed before the advent of new means of providing such services, in particular the provision of such services using terrestrial fixed wireless or satellite services that enter a building through equipment located on rooftops;

(3) the National Telecommunications and Information Administration is the Federal agency tasked with developing policies for the efficient and competitive use of emerging technologies that combine spectrum use with the convergence of communications and computer technologies for the utilization of telecommunications services and information services by federal agencies;

(4) that several States, for example Connecticut and Texas, have already enacted measures to promote non-discriminatory access by telecommunications carriers to rooftops, risers, conduits, utility spaces, and points of entry and demarcation in order to promote the competitive provision of telecommunications services and information services; and

(5) that the Federal government should encourage States to develop similar policies by establishing as federal policy requirements to promote non-discriminatory access to Federal buildings and commercial property used by agencies of the Federal government so that taxpayers receive the benefits and cost savings from the competitive provision of telecommunications services and information services by telecommunications carriers.

SEC. 3. ACCESS TO BUILDINGS FOR COMPETITIVE TELECOMMUNICATIONS SERVICES

The National Telecommunications and Information Administration Organization Act (Title I of Public Law 102–538; 47 U.S.C. 901 et seq.) is amended—

(1) in section 103(b)(2) (47 U.S.C. 902(b)(2)) by adding at the end the following new subparagraph:

''(U) The authority to implement policies for buildings and other structures owned or used by agencies of the Federal government in order to provide for non-discriminatory access to such buildings and structures for the provision of telecommunications services or information services by telecommunications carriers, and to advise the Commission on the development of policies for non-discriminatory access by such carriers to commercial property in general for the provision of such services.''; and

(2) in section 105 (47 U.S.C. 904) by adding at the end the following new subsection:

''(f) PROHIBITION ON DISCRIMINATORY ACCESS.—

''(1) IN GENERAL.—No Federal agency shall enter into a contract with the owner or operator of any commercial property for the rental or lease of all or some portion of such property unless the owner or operator permits non-discriminatory access to, and use of, the rooftops, risers, telephone cabinets, conduits, points of entry or demarcation for internal wiring, easements, rights of way, and all utility spaces in or on such commercial property, for the provision of telecommunications services or information services by any telecommunications carrier that has obtained, where required, a Federal or state certificate of public convenience and necessity for the provision of such services, and which seeks to provide or provides such services to tenants (including, but not limited to, the Federal agency for which such rental or lease is made) of such property. Such owner or operator may—

''(A) charge a reasonable and nondiscriminatory fee (which shall be based on the commercial rental value of the space actually used by the telecommunications carrier) for such access and use;

''(B) impose reasonable and non-discriminatory requirements necessary to protect the safety and condition of the property, and the safety and convenience of tenants and other persons (including hours when entry and work may be conducted on the property);

''(C) require the telecommunications carrier to indemnify the owner or operator for damage caused by the installation, maintenance, or removal of any facilities of such carrier; and

''(D) require the telecommunications carrier to bear the entire cost of installing, operating, maintaining, and removing any facilities of such carrier.

''(2) STATE LAW OR CONTRACTUAL OBLIGATION REQUIRED.—No Federal agency shall enter into a contract with the owner or operator of any commercial property for the rental or lease of all or some portion of such property unless the owner or operator submits to such agency a notarized statement that such owner or operator is obligated under State law, or is obligated or will undertake an obligation through a contractual commitment with each telecommunication carrier providing or seeking to provide service, to resolve any disputes between such telecommunication carriers and such owner or operator that may arise regarding access to the commercial property or the provision of competitive telecommunications services or information services to tenants of such property. To meet the requirements of this paragraph such State process or contractual commitment must—

''(A) provide an effective means for resolution of disputes within 30 days (unless otherwise required by State law or agreed by the parties involved), either through arbitration or order of a State agency or through binding arbitration;

''(B) permit the telecommunications carrier to initiate service or continue service while any dispute is pending;

''(C) provide that any fee charged for access to, or use of, building space (including conduits, risers, and utility closets), easements or rights of way, or rooftops to provide telecommunications service or information service be reasonable and applied in a non-discriminatory manner to all providers of such service, including the incumbent local exchange carrier; and

''(D) provide that requirements with respect to the condition of the property are limited to those necessary to ensure that the value of the property is not diminished by the installation, maintenance, or removal of the facilities of the telecommunications carrier, and do not require the telecommunications carrier to improve the condition of the property in order to obtain access or use.

''(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect six months after the date of enactment of this subsection for all lease or rental agreements entered into or renewed by any Federal agency after such date.

''(4) WAIVER PERMITTED.—The requirements of paragraphs (1) or (2) may be waived on a case by case basis—

''(A) by the head of the agency seeking space in a commercial property upon a determination, which shall be made in writing and be available to the public upon request, that such requirements would result in the affected agency being unable, in that particular case, to obtain any space suitable for the needs of that agency in that general geographic area; or

''(B) by the President upon a finding that waiver of such requirements is necessary to obtain space for the affected agency in that particular case, and that enforcement of such requirements in that particular case would be contrary to the interests of national security.

Any determination under subparagraph (A) may be appealed by any affected telecommunications carrier to the Assistant Secretary, who shall review the agency determination and issue a decision upholding or revoking the agency determination within 30 days of an appeal being filed. The burden shall be on the agency head to demonstrate through the written determination that all reasonable efforts had been made to find suitable alternative space for the agency's needs before the waiver determination was made. The Assistant Secretary shall revoke any agency determination made without all reasonable efforts being made. The decision of the Assistant Secretary shall be binding on the agency whose waiver determination was appealed.

''(5) Limitations.—

''(A) Nothing in this subsection shall waive or modify any requirements or restrictions imposed by any Federal, state, or local agency with authority under other law to impose such restrictions or requirements on the provision of telecommunications services or the facilities used to provide such services.

''(B) Refusal by an owner to provide access to a telecommunications carrier seeking to provide telecommunications services or information services to a commercial property due to a demonstrated lack of available space at a commercial property on a rooftop or in a riser, telephone cabinet, conduit, point of entry or demarcation for internal wiring, or utility space due to existing occupation of such space by two or more telecommunications carriers providing service to that commercial property shall not be a violation of paragraphs (1)(B) or (2)(D) if the owner has made reasonable efforts to permit access by such telecommunications carrier to any space that is available.

''(6) DEFINITIONS.—For the purposes of this subsection the term—

''(A) 'Federal agency' shall mean any executive agency or any establishment in the legislative or judicial branch of the Government;

''(B) 'commercial property' shall include any buildings or other structures offered, in whole or in part, for rent or lease to any Federal agency;

''(C) 'incumbent local exchange carrier' shall have the same meaning given such term in section 251(h) of the Communications Act of 1934 (47 U.S.C. 251(h)); and

''(D) 'information service,' 'telecommunications carrier,' and 'telecommunications service' shall have the same meaning given such terms, respectively, in section 3 of the Communications Act of 1934 (47 U.S.C. 153).''.

SEC. 4. APPLICATION TO PUBLIC BUILDINGS.

Within six months after the date of enactment of this Act the Secretary of Commerce, acting through the Assistant Secretary of Commerce for Telecommunications and Information, shall promulgate final rules, after notice and opportunity for public comment, to apply the requirements of section 105(f) of the National Telecommunications and Information Administration Organization Act, as added by this Act, to all buildings and other structures owned or operated by any Federal agency. In promulgating such rules the Assistant Secretary may, at the direction of the President, exempt any buildings or structures owned or operated by a Federal agency if the application of such requirements would be contrary to the interests of national security. The Assistant Secretary shall coordinate the promulgation of the rules required by this section with the Administrator of the General Services Administration and the heads of any establishments in the legislative and judicial branches of government which are responsible for buildings and other structures owned or operated by such establishments. Such rules may include any requirements for identification, background checks, or other matters necessary to ensure access by telecommunications carriers under this section does not compromise the safety and security of agency operations in government owned or operated buildings or structures. For the purposes of this section, the term ''Federal agency'' shall have the same meaning given such term in section 105(f)(6) of the National Telecommunications and Information Administration Organization Act, as added by this Act.

By Mr. MURKOWSKI (for himself, Mr. BREAUX, Mr. GORTON, Mr. COCHRAN, Mr. HUTCHINSON, Ms. COLLINS, Mrs. LINCOLN, Mr. SHELBY, Ms. SNOWE, Mrs. MURRAY, Mr. SESSIONS, Mr. SMITH of Oregon, Mrs. HUTCHISON, Mr. GRAMS, and Ms. LANDRIEU):

S. 1303. A bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities; to the Committee on Finance.

THE REFORESTATION TAX ACT OF 1999

Mr. MURKOWSKI. Mr. President, on June 17, I introduced bipartisan legislation (1240) providing capital gains for the forest products industry and lifting the existing cap on the reforestation tax credit and amortization provisions of the tax Code.

Unfortunately, because of a clerical error, the section of the bill that lifted the cap on the tax credit and the amortization provisions of the Code was inadvertently omitted from the bill. Today I am reintroducing the bill as it was originally intended to be drafted.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1303

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Reforestation Tax Act of 1999''.

SEC. 2. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to treatment of capital gains) is amended by adding at the end the following new section:

''SEC. 1203. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

''(a) IN GENERAL.—At the election of any taxpayer who has qualified timber gain for any taxable year, there shall be allowed as a deduction from gross income an amount equal to the qualified percentage of such gain.

''(b) QUALIFIED TIMBER GAIN.—For purposes of this section, the term 'qualified timber gain' means gain from the disposition of timber which the taxpayer has owned for more than 1 year.

''(c) QUALIFIED PERCENTAGE.—For purposes of this section, the term 'qualified percentage' means the percentage (not exceeding 50 percent) determined by multiplying—

''(1) 3 percent, by

''(2) the number of years in the holding period of the taxpayer with respect to the timber.

''(d) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under subsection (a) shall be computed by excluding the portion of (if any) the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.''

(b) COORDINATION WITH MAXIMUM RATES OF TAX ON NET CAPITAL GAINS.—

(1) Section 1(h) of such Code (relating to maximum capital gains rate) is amended by adding at the end the following new paragraph:

''(14) QUALIFIED TIMBER GAIN.—For purposes of this section, net capital gain shall be determined without regard to qualified timber gain (as defined in section 1203) with respect to which an election is in effect under section 1203.''

(2) Subsection (a) of section 1201 of such Code (relating to the alternative tax for corporations) is amended by inserting at the end the following new sentence:

''For purposes of this section, net capital gain shall be determined without regard to qualified timber gain (as defined in section 1203) with respect to which an election is in effect under section 1203.''

(c) ALLOWANCE OF DEDUCTION IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of such Code (relating to definition of adjusted gross income) is amended by inserting after paragraph (17) the following new paragraph:

''(18) PARTIAL INFLATION ADJUSTMENT FOR TIMBER.—The deduction allowed by section 1203.''

(d) TECHNICAL AMENDMENTS.—

(1) Subparagraph (B) of section 172(d)(2) of such Code is amended to read as follows:

''(B) the exclusion under section 1202 and the deduction under section 1203 shall not be allowed.''

(2) The last sentence of section 453A(c)(3) of such Code is amended by striking ''(whichever is appropriate)'' and inserting ''or the deduction under section 1203 (whichever is appropriate)''.

(3) Section 641(c)(2)(C) of such Code is amended by inserting after clause (iii) the following new clause:

''(iv) The deduction under section 1203.''

(4) The first sentence of section 642(c)(4) of such Code is amended to read as follows: ''To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a) or qualified timber gain (as defined in section 1203(b)), proper adjustment shall be made for any exclusion allowable under section 1202, and any deduction allowable under section 1203, to the estate or trust.''

(5) The last sentence of section 643(a)(3) of such Code is amended to read as follows: ''The exclusion under section 1202 and the deduction under section 1203 shall not be taken into account.''

(6) The last sentence of section 643(a)(6)(C) of such Code is amended by inserting ''(i)'' before ''there shall'' and by inserting before the period '', and (ii) the deduction under section 1203 (relating to partial inflation adjustment for timber) shall not be taken into account''.

(7) Paragraph (4) of section 691(c) of such Code is amended by inserting ''1203,'' after ''1202,''.

(8) The second sentence of paragraph (2) of section 871(a) of such Code is amended by striking ''section 1202'' and inserting ''sections 1202 and 1203''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 of such Code is amended by adding at the end the following new item:

''Sec. 1203. Partial inflation adjustment for timber.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after December 31, 1998.

SEC. 3. AMORTIZATION OF REFORESTATION EXPENDITURES AND REFORESTATION TAX CREDIT.

(a) DECREASE IN AMORTIZATION PERIOD.—

(1) IN GENERAL.—Section 194(a) of the Internal Revenue Code of 1986 is amended by striking ''84 months'' and inserting ''60 months''.

(2) CONFORMING AMENDMENT.—Section 194(a) of such Code is amended by striking ''84-month period'' and inserting ''60-month period''.

(b) REMOVAL OF CAP ON AMORTIZABLE BASIS.—

(1) Section 194 of the Internal Revenue Code of 1986 is amended by striking subsection (b) and by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(2) Subsection (b) of section 194 of such Code (as redesignated by paragraph (1)) is amended by striking paragraph (4).

(3) Paragraph (1) of section 48(b) of such Code is amended by striking ''(after the application of section 194(b)(1))''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to additions to capital account made after December 31, 1998.

ADDITIONAL COSPONSORS

S. 348

At the request of Ms. SNOWE, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 348, a bill to authorize and facilitate a program to enhance training, research and development, energy conservation and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes.

S. 386

At the request of Mr. GORTON, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 386, a bill to amend the Internal Revenue Code of 1986 to provide for tax-exempt bond financing of certain electric facilities.